
1997 Wis Eth Bd 6
LOCAL CODE — DISQUALIFICATION

The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district:

- (1) not participate in negotiations, discussions, or votes on the teachers' contract;
- (2) may vote on the district's budget if the school board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;
- (3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner;
- (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision;
- (5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member's spouse does not differ materially from the effect on other teachers.

The Ethics Board advises that a school board member who is covered by the school district's health benefits plan not participate in consideration of the terms of that plan or the award of the district's health benefits contract. (September 5, 1997)

Facts

- ¶1. This opinion is based upon these understandings:
- a. You write on behalf of a public school district.
 - b. A member of the district's school board is married to a teacher employed by the district.
 - c. Another member of the school board is covered by the district's health benefits plan.

Questions

¶2. The Ethics Board understands your questions to be:

1. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in discussions, negotiations, or votes on the district's contract with the teachers?
2. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in discussions and votes on the district's annual budget?
3. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in discussions, negotiations, or votes on the district's contracts with employees other than teachers?
4. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in disciplinary matters or matters affecting the employment status, benefits, or working conditions of teachers or other employees?
5. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in matters involving general district policy such as setting class size or teacher planning time?
6. Consistent with statutes administered by the Ethics Board, may the school board member who is covered by the district's health benefits plan participate, in an official capacity, in discussions, negotiations, and votes on labor contracts that include health benefits or participate in selecting the benefit provider or benefit plan design?

Discussion

¶3. Wisconsin's Code of Ethics for Local Government Officials, Employees and Candidates provides that any county corporation counsel, attorney for a local governmental unit, or statewide association of local governmental units may request the Ethics Board to issue an opinion concerning the interpretation of section 19.59, *Wisconsin Statutes*. §19.59(6), *Wisconsin Statutes*.

¶4. Sections 19.59(1)(a) and (c), *Wisconsin Statutes*, apply to your questions. Reduced to their elements, §§19.59(1)(a) and (c)2., *Wisconsin Statutes*, provide:

No local public official
May use his or her office or position
To obtain anything of substantial value
For the official's private benefit or that of his or her immediate family
Or to produce a substantial benefit for the official or his or her
immediate family.¹

Reduced to its elements, §19.59(1)(c)1., *Wisconsin Statutes*, provides:

No local public official
May take any official action
Substantially affecting a matter
In which the official or the official's immediate family
Has a substantial financial interest.²

¹ Section 19.59(1)(a), *Wisconsin Statutes*, provides:

19.59(1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported by ch. 11.

Section 19.59(1)(c)2., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

¶5. The first issue your letter raises is whether members of a school district's board are local public officials to whom these provisions apply. Section 19.42(7x), *Wisconsin Statutes*, provides:

19.42(7x) “Local public official” means an individual holding a local public office.

Section 19.42(7w)(a), *Wisconsin Statutes*, provides:

19.42(7w) “Local public office” means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

Section 19.42(7u), *Wisconsin Statutes*, provides:

19.42(7u) “Local governmental unit” means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

¶6. A member of a public school district board is a local public official under the Ethics Code. School board members hold elective office. Under the statutes, “[t]he school *district* is the territorial unit for school administration.” §115.01(3), *Wisconsin Statutes* (emphasis added). And a school board is in charge of the schools of a school district. §115.001(7), *Wisconsin Statutes*. “Special purpose district” is not defined in the Ethics Code. Wisconsin’s election law, §5.02(20g), *Wisconsin Statutes*, defines “special purpose district” as “any local governmental unit other than a county or municipality.” Elsewhere in the statutes, the term “special purpose district” appears, from context, to be a term of art generally used to refer to statutorily created government bodies other than state agencies and cities, villages, towns, and counties.³ There is nothing in the context of the

² Section 19.59(1)(c)1., *Wisconsin Statutes*, provides:

19.59(1)(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

³ See §§16.97(7); 30.94(1)(c); 59.72(1)(c); 66.285(1)(c); 66.293(1)(d); 66.299(1)(a); 67.05(3)(f); 78.80(4); 106.115(3); 180.0103(10); 230.046(10); 281.51; 281.75(4)(b)4.; 289.33(3)(d); and 943.13(1e)(c), *Wisconsin Statutes*. However, in four instances, the term is used together with the term school district. §§66.042(7); 70.09(2)(a)5.; 71.78(10); 77.61(5)(fm), *Wisconsin Statutes*.

Ethics Code or its legislative history to indicate an intention to exclude school districts from coverage.

¶7. Participating, in an official capacity, in discussions, contract negotiations, and votes on issues before a school board is taking official action. 1996 Wis Eth Bd 13 ¶4; 1995 Wis Eth Bd 6 ¶4; 1992 Wis Eth Bd 22 ¶10. A spouse is a member of an official's immediate family.⁴ A financial interest is substantial if it is of more than token or inconsequential value. 1995 Wis Eth Bd 5 ¶6; 1993 Wis Eth Bd 8 ¶6; 7 Op. Eth. Bd. 1 (1983); 5 Op. Eth. Bd. 97 (1982).

¶8. The ultimate question, then, is which, if any, of the various official actions by a school board member would substantially affect a matter in which the member or the member's spouse has a substantial financial interest. In each case this is a question of fact. Worthy of consideration is whether the member or the member's spouse has a measurable, demonstrable, not speculative, financial interest in the matter and the member's action affects that interest in more than an insignificant way. We will address each of your questions in turn.

1. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in discussions, negotiations, or votes on the district's contract with the teachers?

¶9. Patently, an individual's salary and benefits are things of substantial value and of personal benefit. Therefore, a school board member, consistent with §19.59, should not participate in decisions concerning the contract that will establish the salary and benefits of the member's spouse.⁵ Although the Ethics Board does not administer §946.13, *Wisconsin Statutes*, we note that

⁴ Section 19.42(7)(a), *Wisconsin Statutes*, provides:

19.42 (7) "Immediate family" means:

(a) An individual's spouse.

⁵ We note that §19.59(1)(d) provides that paragraph (1)(c) does not prohibit a local public official from taking any action concerning the lawful payment of salaries or employee benefits. This provision applies: (a) only to the payment, and not the establishment, of salary and benefits; and (b) only to paragraph (1)(c) and not to (1)(a). For these reasons, this provision is not applicable to the questions you have asked. 1996 Wis Eth Bd 10, n. 5.

this statute also appears to prohibit such action.⁶ See 76 Op. Att'y Gen. 15 (1987).

2. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in discussions and votes on the district's annual budget?

¶10. Whether a school board's vote on the school district's budget will substantially affect teacher salaries and benefits is a question of fact. If, prior to acting on a budget, the school board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget, then acting on a budget that merely appropriates moneys for costs already approved is unlikely to affect substantially the school board member's financial interests. As a representative of the people, an individual holding a public office has an obligation to consider and vote on issues before the official. 1996 Wis Eth Bd 10 ¶9. Accounting for that obligation and the incidental effect on the member, we believe a school board member may, consistent with §§19.59(1)(a) and (c), *Wisconsin Statutes*, vote on the budget as a whole if the member does not participate in discussions or votes or any amendment to the budget specifically affecting the salary, benefits, or employment status of the member's spouse.

¶11. On the other hand, if the school board has not entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget, then acting on a budget that sets parameters for collective bargaining is likely to substantially affect the school board member's financial interests. In this instance, we advise that the board member not participate in discussions or vote on the budget. If other portions of the school district budget can be separated from portions affecting teacher salaries and benefits, the member may participate in discussions and votes on those aspects of the budget.

3. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate,

⁶ Section 946.13, *Wisconsin Statutes*, in relevant part, provides:

946.13 Private interest in public contract prohibited. (1) Any public officer or public employe who does any of the following is guilty of a Class E felony:

* * *

(b) In the officer's or employe's capacity as such officer or employe, participates in the making of a contract in which the officer or employe has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employe's part.

in an official capacity, in discussions, negotiations, or votes on the district's contracts with employees other than teachers?

¶12. You have indicated that salaries and benefits that are negotiated in contracts for non-teachers may serve as a precedent for the teachers' contract. If the terms of another union's contract will serve as precedent for the terms of the teachers' contract, then we advise that the school board member not participate in negotiations, discussions, or votes on any of those contracts. See 1994 Wis Eth Bd 6 ¶7; 1994 Wis Eth Bd 4 ¶5. Experience is one factor that might indicate whether another union's contract will have a precedential effect on the teachers' contract. On the other hand, if the effect of another contract's terms on the teachers' contract is merely conjectural, or if the other contract will have only an inconsequential influence, we believe the member may participate in decisions concerning that contract. See *LeBow v. Optometry Examining Board*, 52 Wis.2d 569, 574 (1971); 1996 Wis Eth Bd 3 ¶5; 1995 Wis Eth Bd 4 ¶7; 1993 Wis Eth Bd 11 ¶5.

4. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in disciplinary matters or matters affecting the employment status, benefits, or working conditions of teachers or other employees?

¶13. Matters affecting a particular teacher are quasi-judicial in nature. Section 19.59 prohibits an official only to act in a matter in which the official or the official's spouse has a substantial financial interest or to use the official's position to gain a substantial benefit or anything of substantial value for personal benefit or for the benefit of the official's spouse. Although the facts may vary, it seems unlikely that participation in a disciplinary or similar matter affecting another teacher would result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision. Although you have indicated that such decisions may affect future decisions involving other teachers or future interpretations of the teachers' contract, absent other facts, any effect on the member's spouse appears too remote and speculative for us to say that the member's participation in the decision is barred by the statute. It may be appropriate to address this question in light of specific circumstances.

5. Consistent with statutes administered by the Ethics Board, may the school board member whose spouse is a teacher employed by the district participate, in an official capacity, in matters involving general district policy such as setting class size or teacher planning time?

¶14. A decision affecting class size, teaching hours, and the like could result in a substantial benefit for the spouse of the school board member.

However, as we understand it, these issues usually arise as general policy decisions that are quasi-legislative in nature. The Ethics Board has consistently said that an official may participate in quasi-legislative matters, even if a decision may affect the official, if (1) the decision affects a broad class of individuals; (2) the official represents a small portion of the entire class; and (3) the official's interest is not affected to any greater or lesser extent than others' interests. *See, e.g.*, 1994 Wis Eth Bd 6 Supp. ¶7; 8 Op. Eth. Bd. 21 (1984); 5 Op. Eth. Bd. 65 (1981); 5 Op. Eth. Bd. 59 (1981). Thus, as long as a policy decision pertains to all or the substantial majority of teachers in the district and does not affect the member's spouse in a way that differs materially from the effect on other teachers, §19.59 does not bar the member's participation in such policy issues. If a decision affects the school board member's spouse in way that does differ materially from the effect on most other teachers, then the member ought not to participate in the decision.

6. Consistent with statutes administered by the Ethics Board, may the school board member who is covered by the district's health benefits plan participate, in an official capacity, in discussions, negotiations, and votes on labor contracts that include health benefits or participate in selecting the benefit provider or benefit plan design?

¶15. The answer to your question is "no." We have previously opined that the terms of a health insurance contract can be something of substantial value and a substantial benefit to the insured. 1996 Wis Eth Bd 10 ¶7. The private interest of a school board member who is covered by the school district's insurance may directly conflict with the interest of the public whom the official serves. The statute requires that the school board member who is covered by the district's health benefits plan not participate in consideration of the terms or award of that contract.

Advice

¶16. The Ethics Board advises that a school board member whose spouse is employed as a teacher by the school district:

- (1) not participate in negotiations, discussions, or votes on the teachers' contract;
- (2) may vote on the district's budget if the school board has already entered into a contract that establishes teachers' salaries and benefits for the period covered by the budget but may not vote on the budget if the budget will substantially affect teacher salaries or benefits;

- (3) not participate in negotiations, discussions, or votes on the terms of another union's contract if it will affect the terms of the teachers' contract in other than an inconsequential manner;
- (4) may participate in a disciplinary or similar matter affecting another teacher if the action does not result in a school board member's spouse obtaining a substantial benefit or anything of substantial value from such decision;
- (5) may participate in decisions affecting class size, teaching hours, other general school district policy decisions if the effect on the school board member's spouse does not differ materially from the effect on other teachers.

The Ethics Board advises that a school board member who is covered by the school district's health benefits plan not participate in consideration of the terms of that plan or the award of the district's health benefits contract.

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